

ARGUMENT

Claims 1- 23 remain in the application. Independent Claims 1, 18, 21 and 22 have been amended, as well as dependent Claims 5-11 and 19. The Examiner is authorized to charge any fees arising from the addition of these new claims to Deposit Account No. 10-0096.

Applicant has re-presented the claims in a manner that maintains the spatial relationship originally presented in the format of tables. Moreover, Applicant has carefully reviewed the original claims, the preliminary amendment, and all subsequent claim amendments and has corrected the presentation of the claims accordingly.

The Examiner objected to Claim 1 as set forth in Item #3 of the Office Action. Applicant suggests that the use of “and” is correct. The external data is both generated externally from a specific facility and unrelated to the specific facility. However, Applicant has amended Claim 1 to clarify the type of data involved in the claimed process, namely “external” data and “internal” data.

Applicant has further corrected Claims 5 and 9-11 to use the foregoing nomenclature for internal data and external data.

Applicant has also amended the other Independent Claims 18, 21 and 22 to conform substantially to the recitations of previously amended Claim 1.

Turning to the substantive rejections, the Examiner has rejected Claims 1-10 under 35 U.S.C. 102(e) as being anticipated by pending application US 20030115198 A1 (“Singer”). The Examiner has also rejected Claims 11-23 under 35 U.S.C. 103(a) as being unpatentable over various combinations of Singer and USP 5,668,735 (“Dominguez”). Applicant traverses each of these

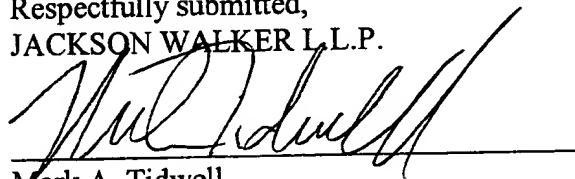
rejections on the grounds that Singer should be removed as a basis for rejection based on the 37 C.F.R. § 131 Affidavit submitted herewith.

The attached 37 C.F.R. § 131 Affidavit, along with the evidence provided therein, establishes that the Applicant conceived of the invention prior to the earliest possible priority date of Singer, and used diligence in pursuing the invention until the filing of the current application, resulting in constructive reduction to practice. Moreover, Singer was filed on February 4, 2003 but claims priority to U.S. Application No. 09/654,515, filed on September 1, 2000 ("Singer Priority Date"). The Singer Priority Date is less than one year prior to Applicant's May 4, 2001 filing date. Finally, Singer neither teaches nor claims Applicant's invention. For the foregoing reasons, and in light of the averments in the Affidavit, Singer should be withdrawn as grounds for the various rejections and Claims 1-23. Given that it has been established that the remaining reference alone neither anticipates any of the claims or renders such claims obvious, Claims 1-23 should thereafter be passed to allowance.

Applicant notes that none of the amendments have altered the substantive state of the claims beyond their scope as they existed in the last office action. To the extent independent Claims 18, 21 and 22 have been amended, the amendments substantially track the language of Claim 1 as previously presented. Thus, none of the amendments should necessitate a new search. It is presumed that Singer was the closest best reference the Examiner uncovered when considering Claim 1 and would be the closest best reference with regards to Claims 18, 21 and 22 as well.

Since the application is under a final rejection, to the extent the Examiner continues to reject any of the Claims, the Applicant would like to arrange a phone interview with the Examiner at the Examiner's convenience.

Respectfully submitted,
JACKSON WALKER L.L.P.



Mark A. Tidwell
Reg. No. 37,456
112 E. Pecan Street, Suite 2100
San Antonio, Texas 78205-1521
Phone: (713) 752-4578
Fax: (713) 752-4221
Attorneys for Applicant

CERTIFICATE OF MAILING

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited on the date shown below with the United States Postal Service, with sufficient postage as First Class Mail (37 CFR 1.8(a)), in an envelope addressed to Mail Stop Response/FEE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA, 22313-1450.

Date: March 7, 2006


Renee Treider

4003396v.3